

July 21, 2011

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: WC Docket No. 09-197 - Petition for Forbearance of Cricket  
Communications, Inc.  
NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

By this letter, TracFone Wireless, Inc. ("TracFone") responds to the notice of ex parte presentation filed with the Commission July 15, 2011 by the California Rural ILEC Group in the above-captioned matter. According to that letter, on July 13, 2011, representatives of the California Rural ILEC Group met with members of the staff of the Wireline Competition Bureau and with several Commissioners' advisors to persuade them not to grant Cricket Communications, Inc.'s ("Cricket") petition for forbearance from application or enforcement of Section 214(e)(5) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(5)), and Section 54.207 of the Commission's Rules (47 C.F.R. § 54.207). Those provisions require applicants for designation as an eligible telecommunications carrier ("ETC") proposing to serve areas which include rural telephone companies' study areas either to serve the entirety of those study areas or to have the study areas redefined.

As Cricket explained in its petition and as TracFone further explained in its comments in support of the Cricket petition (filed July 26, 2010), forbearance is appropriate -- indeed, it is compelled -- in situations where wireless carriers seek ETC designation for the limited purpose of receiving support from the low-income portion of the Universal Service Fund in order to provide Lifeline and Link-Up service, and who do not seek support from the high cost portion of the USF to construct facilities which will compete with those of rural telephone companies.

Although TracFone will not reiterate its prior comments, several assertions in the California Rural ILEC Group's July 15, 2011 ex parte letter warrant response. First, it claims that exercise by the Commission of forbearance would "strip the states of the ability to consider the important competitive and consumer impacts that can occur if a prospective ETC does not commit to serve all of a rural study area." (letter at 2). Since the ETC petitioners who would be impacted by forbearance from Section 214(e)(5) and Section 54.207 do not seek high cost support to finance construction of facilities which will compete with those rural telephone companies, it is difficult to imagine what possible competitive and consumer impacts would result, other than increasing consumer choice of Lifeline providers and bringing the security and convenience of mobile telecommunications to segments of the population to whom mobile



telecommunications services were heretofore unavailable, or at least unavailable at affordable prices.

Moreover, if, as the California Rural ILEC Group suggests, forbearance would somehow deprive state commissions of authority to make competitive and consumer impact determinations, one would have expected that concern to be asserted by state commissions -- not by a group of rural telephone companies seeking protection from competition. Yet only one state commission -- the Pennsylvania Public Utilities Commission -- filed comments on the Cricket petition.<sup>1</sup> However, a careful reading of those comments indicates that the Pennsylvania Commission's objection was to forbearance from the facilities-based service requirement of Section 214(e)(1)(A) -- not to forbearance from the service area definition provision of Section 214(e)(5).

Further, the California Rural ILEC Group asserted that allowing a wireless ETC to provide Lifeline service in rural areas would "necessarily" reduce revenues for the California Rural ILECs. This assertion is unsupported and unsupportable. Every telephone company, including every member of the California Rural ILEC Group, has access to the federal Universal Service Fund to provide Lifeline service to low-income consumers residing in their service areas and has every opportunity to compete for those low-income Lifeline-eligible customers. Neither Cricket nor any other ETC -- wireline or wireless -- would enjoy any competitive advantage over those companies in offering Lifeline services to qualified low-income persons residing within those territories.

To better understand the California Rural ILEC Group's real intent in opposing the Cricket petition for forbearance, it is helpful to be aware of that group's tactics within California. In recent years, several wireless carriers have petitioned the California Public Utilities Commission for designation as ETCs for the limited purpose of providing Lifeline service in California. Those have included TracFone, Virgin Mobile, Cricket, and Nexus Communications. The California Rural ILEC Group has opposed each of those ETC petitions and has demanded that those companies not be allowed to provide Lifeline services to low-income consumers residing within any of their service areas. Even when the ETC petitioners yielded to this demand and voluntarily agreed not to provide Lifeline in rural ILEC service areas, the California Rural ILEC Group has continued to oppose those petitions alleging that such voluntary commitments would not be enforceable. Those tactics viewed in concert with their opposition to the Cricket petition leads to only one conclusion: that the California Rural ILECs will object to any ETC competing in their service areas, even where that competition is limited to providing Lifeline alternatives to qualified low-income consumers.

Finally and perhaps most importantly, the California Rural ILEC Group appears to believe that whether to grant Cricket's ETC petition is within the Commission's discretion. As Cricket noted in its petition and as TracFone indicated in its comments, grant of forbearance is not discretionary. Section 10(a) of the Communications Act (47 U.S.C. § 160(a)) is clear and

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<sup>1</sup> Significantly, the California Public Utilities Commission which regulates the California rural ILECs and which has authority to designate ETCs in California chose not to comment on the Cricket forbearance petition.

unequivocal: when a petitioner for forbearance has met all three prongs of the forbearance standard codified at Section 10(a), the Commission **shall** (not may) forbear from applying the provision of the Act or Commission regulation in question. Since each prong of the forbearance standard has been met, the Commission is statutorily compelled to forbear from application or enforcement of Section 214(e)(5) and Section 54.207. Accordingly, the Cricket petition should be granted expeditiously and the scope of that forbearance should extend to all wireless carriers seeking ETC designation in any state for the limited purpose of providing Lifeline service to qualified low-income households.

Respectfully submitted,



Mitchell F. Brecher

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